

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6335 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

SURESHCHANDRA LALJIBHAI JHAVERI

Versus

COLLECTOR, SURENDRANAGAR & ORS.

Appearance:

Shri D.D. Vyas, Advocate, for the Petitioner
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/07/96

ORAL JUDGEMENT

The order passed by the Collector of Surendranagar (respondent No. 1 herein) on 31st August 1984 in Miscellaneous Case No. 28 of 1983 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 2 herein) on 14th March

1986 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 1 held that the land housing the petitioner's ginning factory situated in village Karol taluka Limdi (the disputed land for convenience) was assessable to land revenue in accordance with the prescribed non-agricultural assessment rates from 1949-50.

2. The facts giving rise to this petition move in a narrow compass. The petitioner's ginning factory has been in the disputed land since 1919. At that time it was not assessed to any land revenue. There was no law providing for assessment of land revenue in that region of Saurashtra at the relevant time. It appears that the Bombay Land Revenue Code, 1879 (the Code for brief) was made applicable to the Saurashtra region some time in 1949. It appears that some time in 1961 the case was taken up whether or not the disputed land was assessable to land revenue. It appears from the record that the then Deputy Collector at Limdi came to the conclusion that it was not assessable to land revenue. It appears that respondent No. 1 thought that the disputed land was assessable to land revenue. He therefore took up the matter for fixing the assessment in that regard. Thereafter, by his order passed on 27th/29th June 1983, he fixed the assessment and levied it from the year 1949-50. The petitioner appears to have carried the matter in revision before respondent No. 2 under sec. 211 of the Code. The aforesaid order of respondent No. 1 was set aside on the ground that the petitioner was given no opportunity of hearing before fixing the assessment. It appears that the petitioner was thereupon given an opportunity to present his case for the purpose. He appears to have filed his reply on 19th March 1984 and objected to levy of assessment mainly on the ground that the disputed land was not subjected to any assessment of land revenue. Thereafter, by the order passed on 31st August 1984, respondent No. 1 came to the conclusion that the disputed land was assessable to land revenue from 1949-50 at the prevalent rate of non-agricultural assessment. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 2. By the order passed on 14th March 1986 in the aforesaid revisional proceeding, respondent No. 2 rejected it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution for questioning the correctness of the order at Annexure A to this petition as affirmed in revision by the order at Annexure B to

this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary objection as to maintainability of this petition under art. 227 of the Constitution of India. Thereupon learned Advocate Shri Vyas for the petitioner has orally applied for treating this application as also under art. 226 of the Constitution of India. Such oral application is accepted and this petition is ordered to be treated as also under art. 226 of the Constitution of India on payment of the deficit court-fees, if any, within 15 days from today.

4. It is difficult to agree with the submission urged before me by learned Advocate Shri Vyas for the petitioner to the effect that the disputed land could not

have been assessed to any land revenue under the Code as it was not assessable to land revenue prior to coming into force of the Code in the Saurashtra region. It cannot be gainsaid that, on coming into force of the Act in that region, by virtue of the relevant provisions contained in sections 45 and 48 thereof, such land would become liable to assessment of land revenue. Section 52 thereof provides for determination of such assessment. It is not in dispute that the assessment was not fixed under Chapter VIIIA of the Code. In that view of the matter, respondent No. 1 rightly took up the matter for fixation of the assessment under sec. 52 thereof.

5. Learned Advocate Shri Vyas for the petitioner is however right in his submission that fixation of assessment could not be retrospective. The language of sec. 52 of the Code leaves no room for doubt that such fixation of assessment can be made prospectively and not retrospectively. Besides, as held by the binding Division Bench ruling of the Bombay High Court in the case of Ahmedabad Ginning and Manufacturing Co. Ltd. v. Secretary of State reported in AIR 1937 Bombay 226, such assessment could not be levied retrospectively. In that case, the land in question was assessed to land revenue under the Code. That assessment was sought to be revised. Such revision was made retrospectively. In that context, the Bombay High Court in its aforesaid Division Bench ruling has clearly held that such revision of assessment could not be made retrospectively.

6. The aforesaid Division Bench ruling of the Bombay High Court is binding to me. Even otherwise, I am in respectful agreement therewith. By analogy, it would be

applicable in the instant case. What applies to revision of assessment would also apply to fixation of assessment in the beginning. If revision of assessment cannot be made retrospectively, its fixation can certainly not be made retrospectively. The aforesaid Division Bench ruling cannot be distinguished on the ground that it was a case of revision of assessment and not fixation thereof.

7. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures A and B to this petition cannot be sustained in law in toto. The petitioner is certainly liable to pay land revenue with respect to the disputed land though it might not have been liable to pay such land revenue at the time of non-agricultural use of the disputed land in question. The petitioner's liability can however not be retrospectively fixed from 1949-50. It has to be fixed only from the time an opportunity of hearing was given to the petitioner. That was given some time before 19th March 1984. He therefore becomes liable to pay land revenue assessment from the revenue year 1983-84. The fixation of assessment of land revenue prior thereto cannot be upheld in law.

8. In the result, this petition is accepted to the aforesaid extent. The order passed by the Collector of Surendranagar (respondent No. 1 herein) on 31st August 1984 in Miscellaneous Case No. 28 of 1983 at Annexure A to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 14th March 1986 at Annexure B to this petition is modified by substituting the fixation of the liability for assessment from revenue year 1983-84 instead of 1949-50. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
